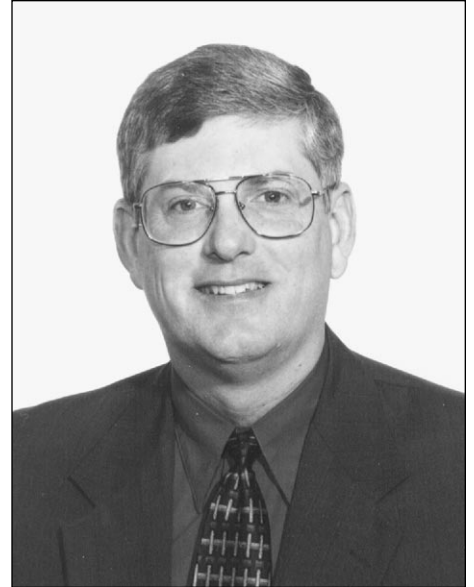


# DNA Testing

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Last year the Michigan Legislature passed a series of DNA Identification Profiling bills aimed at expanding the court's authority to order DNA testing. Public Acts 84-91 of 2001 require that DNA samples be taken from persons convicted or found responsible for all felonies and certain misdemeanors on or after January 1, 2002.

Under the new procedures, the court must order the county sheriff or investigating law enforcement agency to collect the DNA sample. Each person convicted or found responsible will be ordered to pay a \$60 assessment to offset costs associated with DNA testing. The court's funding unit will retain 10 percent of the fee. The remainder will be transmitted by the County Clerk's Office as follows: 25 percent to the law enforcement agency that collected the sample, and 65 percent to the Michigan State Police. The court possesses the authority to suspend all or part of the assessment, after review of a verified petition, if the defendant establishes that he/she is unable to pay the assessment. The assessment must be ordered on the record and shown separately in the judgment of sentence.

Persons who already have DNA samples on file with the State Police or the investigating law enforcement agency will not have to provide another sample or pay the assessment so long as the initial sample meets the requirements of Public Act 88 of 2001 (MCL 28.172). A defendant's criminal history record, as maintained by the State Police, will indicate whether a DNA sample is on file.

The new laws also impact juveniles and adults who are in custody as of January 1, 2002. A juvenile who is a public ward under a youth agency's jurisdiction or under the supervision of the Family Independence Agency or a county juvenile agency may not be placed in a community placement or discharged from wardship until a DNA sample has been provided. Similarly, an incarcerated adult may not be released on parole, placed in a community placement facility, or discharged upon completion of his/her sentence until a DNA sample is provided. The DNA sample in these circumstances applies to incarcerated in-custody juveniles and adults who have been convicted or found responsible for any of the applicable offenses. In-custody juveniles and adult offenders are not entitled to a hearing. Furthermore, the supervising agency is not required to obtain a court order before collecting the sample.

In any of the situations described above, refusal to provide a DNA sample is a misdemeanor punishable by up to one year imprisonment or a fine of up to \$1,000, or both.

In Oakland County, the DNA sampling process will work as follows. The Prosecutor's Office will prepare the

*Order for DNA Profiling* and present it to the assigned judge at the time of conviction or finding of responsibility. A copy of the order will be served on the defendant or

juvenile in court. A defendant who is released on bond will be instructed to contact the investigating law enforcement agency as to when DNA testing is performed. The judge's clerk or secretary will fax a copy of the order to the arresting law enforcement agency. If the agency is the Oakland County Sheriff's Department, the clerk will provide the deputy with a copy of the order while in the courtroom at the time of conviction. It will be the defendant's responsibility to go to the arresting law enforcement agency and provide a DNA sample after conviction and prior to sentencing. In no circumstances will testing be administered in the courtroom.

The arresting law enforcement agency will conduct testing for in-custody defendants at the Oakland County Jail. The Sheriff's Department will make space available for the arresting agency's law enforcement personnel to collect samples for confined offenders.

The process described above is similar for juveniles except that a juvenile on bond will be required to contact the Oakland County Sheriff's Department Command Desk within 24 hours of his or her finding of responsibility. Sheriff's Department personnel will provide the juvenile with the name of the arresting agency to which he/she must report for DNA testing. A DNA sample for an in-custody juvenile offender will be collected by the arresting law enforcement agency at the facility in which the juvenile is housed. In either case, on bond or in custody, the sample must be collected after the finding of responsibility and before sentencing or disposition as ordered by the court.

The State Police must permanently retain DNA samples. However, a sample and the associated DNA profile may subsequently be eradicated upon order of the court if a finding is made that the individual has proven by clear and convincing evidence that the conviction was reversed. Lastly, provisions exist within the new laws regarding limitations on the disclosure of DNA profiles; however, there are no penalties for improper disclosures.

Until next month ...